

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CHRISTINE DUBE,)	
)	
Plaintiff)	
)	
v.)	Civil No. 96-80-B
)	
AMERICAN ISUZU MOTORS, INC.,)	
)	
Defendant)	

ORDER GRANTING MOTION TO COMPEL

The Court has before it the plaintiff's first motion to compel the production of documents (Docket # 8) by the defendant. The Court already has granted a second motion to compel the production of documents (Docket # 13) in the sole control of the defendant, American Isuzu Motors, Inc. (AIMI). The plaintiff's request here concerns technical materials describing the design and manufacture of various Isuzu hinges that may be in the possession of a non-party, separate corporate entity, Isuzu Motors Limited, Japan (IML). AIMI objects to the motion, replying that it did not design, manufacture, or test the truck that is the subject of this suit, and therefore is unable to produce the materials because they are in the control and possession of IML.

AIMI is owned 80% by Isuzu Motors America, Inc. (IMA) and 20% by Itochu International, an unrelated Japanese conglomerate. IMA in turn is a wholly-owned subsidiary of IML, the Japanese parent company that manufactured the vehicle at issue in the case. The word "control" is to be broadly construed for purposes of discovery pursuant to Fed. R. Civ. P. 34. *See Addamax Corp. v. Open Software Foundation, Inc.*, 148 F.R.D. 462, 465 (D. Mass. 1993) (citing *Camden Iron and Metal, Inc. v. Marubeni America Corp.*, 138 F.R.D. 438, 441 (D. N.J. 1991)) (other citations

omitted). "In the circumstances when documents are in the possession of the corporate parent, but are sought from the subsidiary,

. . . control has been found to exist where the 'alter ego' doctrine warranted piercing the corporate veil, . . . and where the subsidiary was an agent of the parent in the transaction giving rise to the suit and in litigating the suit on the parent's behalf."

Id. (quoting *Gerling International Insurance Co. v. Commissioner of Internal Revenue*, 839 F.2d 131, 140 (3d Cir. 1988)) (citations omitted).

There is little dispute that in certain circumstances a non-party subsidiary can be ordered to produce documents possessed by its foreign parent, *Addamax*, 148 F.R.D. at 469, or that a non-party parent may be ordered to produce documents it possesses when the litigating corporation is the subsidiary, *Gerling*, 839 F.2d at 140-141. "[I]n parent/subsidiary situations, the determination of control turns upon whether the intracorporate relationship establishes some legal right, authority *or* ability to obtain the requested documents on demand. Evidence considered by the courts includes the degree of ownership and control exercised by the parent over the subsidiary, a showing that the two entities operated as one, demonstrated access to documents in the ordinary course of business, and an agency relationship." *Camden Iron & Metal, Inc.*, 138 F.R.D. at 442 (citing *Gerling*, 839 F.2d at 140-141).

The Court is satisfied that, based on the above factors, a sufficiently close relationship exists between IML and IMA, and between IMA and its agent in America, AIMI, as to permit the plaintiff's request that AIMI produce the relevant documents in the control of IML to be answered. AIMI appears to be the sole agent of IML for the purpose of selling and servicing IML's vehicles in the United States. The Court concludes that the defendant must produce those documents relating to the design and manufacture of Isuzu hinges that are in the control of IML. The plaintiff has presented

sufficient evidence for the Court to conclude that the defendant's business may readily be subjected to the control of IML and IMA on a day-to-day basis. *See Bergeson v. American Isuzu Motors, Inc.*, No. 2:90-CV-127 (PCD) (D. Conn. 1992).

Accordingly, it is hereby **ORDERED** that the plaintiff's motion to compel the defendant to produce documents be **GRANTED**.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated at Bangor, Maine, on March 21, 1997.